IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7749 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRASINH @ NARAN @ NARESHCHANDANSINH CHAUHAN- RAJPUT
Versus
COMMISSIONER OF POLICE

Appearance:
MS DR KACHHAVAH for Petitioner
Mr.D.N.Patel, Ld.AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The detenu has been detained by the Commissioner of Police, Ahmedabad City - respondent no.1 herein under the provisions contained in the Gujarat Prevention of Anti-social activities Act, 1985 ("PASA" for short) by an order dated 27.7.1999.

2. The grounds of detention are produced at Annexure `C' to the petition dated 27.7.1999. It appears that the detenu is a boot legger and is engaged in dealing in illicit liquor. There are 7 cases registered against the detenu. Apart from that the detenu is in habit of beating innocent persons if the innocent persons do not cooperate in his illegal activities. There are instances disclosed in the ground of detention. The Detaining Authority was satisfied that the detenu is required to be detained. Neither the State nor the Detaining Authority has filed affidavit to justify the order of detention. IN Para 13, the detenu has specifically averred as under:-

> "13. The petitioner further submits that, the representation is sent to the detaining authority dated 24.9.1999, through the Advocate against the order of detention. It is also requested in the said representation to forward it to the State Government for considering the same. The petitioner further submits that, the representation is not sent immediately to the State Government and it is delayed for considering the same, his valuable right u/Art. 22(5) of the Constitution of India is violated and his continued detention has become illegal."

Thus, it is very clear that in absence of the affidavit in reply filed by the State, it would not be possible for the Court to come to a conclusion that the detenu's representation has been considered by the State Government in accordance with law or not. When a person is detained, his representation should be disposed of in accordance with law. In absence of the material on record, it is required to be held that the continued detention is bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

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